TJSL Research Paper No. 1754705
February 2011

The United States and Torture: Interrogation, Incarceration, and Abuse

[Book Introduction]

Published by New York University Press, 2011

Edited and Introduction
by
Marjorie Cohn

THE UNITED STATES AND TORTURE: INTERROGATION, INCARCERATION, AND ABUSE, edited by Marjorie Cohn (New York University Press, 2011)

Introduction

An American Policy of Torture

Marjorie Cohn

Emboldened by the terrorist attacks of September 11, 2001, the Bush administration lost no time establishing a policy that authorized the use of "enhanced interrogation techniques," that is, torture and abuse. Cofer Black, head of the CIA Counterterrorist Center, testified at a joint hearing of the House and Senate intelligence committees in September 2002: "This is a very highly classified area, but I have to say that all you need to know: There was a before 9/11, and there was an after 9/11. After 9/11 the gloves come off."[1] Indeed, in his January 2003 State of the Union Address, President Bush admitted: "All told, more than 3,000 suspected terrorists have been arrested in many countries. Many others have met a different fate. Let's put it this way—they are no longer a problem to the United States and our friends and allies."[2] Bush was tacitly admitting to the illegal practice of summary execution.[3]

The first indication that Bush officials would employ torture in their "War on Terror" occurred in December 2001, after U.S. citizen John Walker Lindh was captured in Afghanistan. Lindh's American interrogators stripped and gagged him, strapped him to a board, and displayed him to the press. He was writhing in pain from a bullet which U.S. officials would leave in his body for weeks in order to "preserve the chain of custody of

the evidence" against him.[4] A Navy admiral told the intelligence officer who interrogated Lindh, "The secretary of defense's counsel has authorized him to 'take the gloves off' and ask whatever he wanted."[5] Although Lindh was initially charged with terrorism crimes that exposed him to three life terms plus 90 years, then-Attorney General John Ashcroft permitted him to plead guilty to lesser offenses that garnered him 20 years. The condition: that Lindh declare he suffered "no deliberate mistreatment" while in custody.[6] The cover-up was under way.

In December 2002, to the consternation of the U.S. State Department, the documentary titled *Afghan Massacre*[7] was broadcast on German television. It shows interviews with eyewitnesses to the torture and slaughter of 3,000 Taliban POWs, who surrendered to U.S. and allied Afghan forces. The film demonstrates the complicity of the U.S. Army command in the killing of these 3,000 men. Some of the prisoners died from suffocation while being transported in closed containers that lacked any ventilation. An Afghan soldier who traveled with the convoy reported that he was ordered by an American commander to fire shots into the containers to provide air, knowing he would hit the men inside. One of the drivers recounted the fate of survivors of the transport—dumped in the desert, shot and left to be eaten by dogs, as 30 to 40 American soldiers looked on. These allegations suggest evidence of war crimes and crimes against humanity under the statute of the International Criminal Court (ICC). It is precisely liability for actions such as these that Bush sought to avoid when he removed the United States' signature from the ICC treaty in May 2002.

A week after the documentary aired in Germany, the *Washington Post* reported that "stress and duress" tactics were being used on captured al-Qaeda operatives and Taliban commanders being interrogated in the CIA's secret detention center at the U.S.–occupied Bagram air base in Afghanistan.[8] Those who remained uncooperative could be kept standing or kneeling for hours, wearing black hoods and spray-painted goggles. Some were held in awkward, painful positions and deprived of sleep with a bombardment of lights for 24 hours. The article quotes "Americans with direct knowledge and others who have witnessed the treatment." They reported that military police and U.S. Army Special Forces troops beat captives and confined them in tiny rooms. Many were blindfolded, thrown into walls, tethered in painful positions, subjected to loud noises, and deprived of sleep. Witnesses also described prisoners bound to stretchers with duct tape for transport, much like the treatment Lindh suffered. At least two prisoners are known to have died at Bagram, one of a pulmonary embolism, the other of a heart attack.

The Bush administration experienced a public relations disaster with the 2004 publication of grotesque photographs from Abu Ghraib depicting naked Iraqis piled on top of each other, forced to masturbate, and led around on leashes like dogs. Shock waves reverberated around the world. The United States, which routinely criticizes other countries for human rights violations, was exposed as a major rights violator itself. People of Arab and Muslim descent were outraged at the treatment of people of color in the Iraqi prison. Former Navy General Counsel Alberto Mora told Congress, "There are serving U.S. flag-rank officers who maintain that the first and second identifiable causes of U.S. combat deaths in Iraq—as judged by their effectiveness in recruiting insurgent fighters into combat—are, respectively the symbols of Abu Ghraib and Guantánamo."[9]

After the Abu Ghraib photos became public, Bush declared, "I shared a deep disgust that those prisoners were treated the way they were treated."[10] Yet less than a year later, his Justice Department issued secret opinions endorsing the harshest interrogation techniques the CIA had ever used.[11] The memos justify banging heads into walls 30 times in a row, prolonged nudity, repeated facial and abdominal slapping, dietary manipulation, and dousing with water as cold as 41 degrees. They countenance shackling in a standing position for 180 hours, sleep deprivation for 11 days, confinement of people in small dark boxes with insects for hours, and waterboarding to create the perception of suffocation and drowning. Moreover, the memos permit many of these techniques to be used in combination for a 30-day period.[12] Yet, Bush insisted, "This government does not torture people."[13]

Evidence of cruel treatment has continued to emerge. One form of torture CIA interrogators plied was "stress positions," suspending the prisoner from the ceiling or wall by his wrists, handcuffed behind his back. Iraqi Manadel Jamadi was subjected to this technique before he died in CIA custody at Abu Ghraib in November 2003. Tony Diaz, an MP who witnessed Jamadi's torture, said that blood gushed from his mouth like "a faucet had turned on" after Jamadi was lowered to the ground.[14]

As more stories of torture and cruelty surfaced from U.S. prisons in Afghanistan, Iraq, Guantánamo Bay, and the secret CIA black sites, it became clear there was an interrogation policy set at the top levels of our government that authorized the mistreatment. The "torture memos," written by former lawyers in the Justice Department's Office of Legal Counsel, contained twisted legal reasoning that purported to define torture more narrowly than U.S. law allows. Torture constitutes a war crime

under the U.S. War Crimes Act.[15] The memos advised high Bush officials how to avoid criminal liability under the act.[16]

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, a treaty the United States has ratified, making it U.S. law under the Supremacy Clause of the Constitution,[17] contains an absolute ban on torture: "No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture."[18] The prohibition against torture is so fundamental it is considered *jus cogens*, a peremptory norm of international law binding on all countries, even if they have not ratified the Torture Convention.

Despite our laws prohibiting torture, the U.S. government has also employed it in American prisons. Torture in this country goes back at least to the nineteenth century. Slaves were often whipped and tortured in other ways, and the United States has frequently aided and abetted repressive regimes that have tortured and abused their people. The CIA developed torture manuals and the U.S. Army trained future torturers at the School of the Americas. Following this tradition, the Bush administration, under the guise of the "War on Terror," set policies that led to the torture and abuse of prisoners.

This collection details the complicity of the U.S. government in the torture and cruel treatment of prisoners both at home and abroad. In her compelling preface, Sister Dianna Ortiz describes the unimaginable treatment she endured in 1987, when she was in Guatemala doing missionary work while the United States was supporting the dictatorship there. She survived and founded the Torture Abolition and Survivors Support

Coalition International, and her work has made her a national symbol of the struggle to abolish torture.

In Part I, "The History and Character of Torture," chapters written by an historian, a lawyer, and a political scientist trace the history of CIA torture and U.S. complicity in torture throughout Latin America. A philosopher and a lawyer then analyze the character of torture—the ticking time bomb scenario, and parallels between torture and "one-sided warfare."

Part II, "Torture and Cruel Treatment of Prisoners in U.S. Custody," brings the study into the current context of the War on Terror. A journalist examines the Bush administration's "extraordinary rendition" program, in which a person is abducted without any legal proceedings and transferred to a foreign country for detention and interrogation, often tortured. Two lawyers look at the treatment of detainees at Guantánamo. The role played by psychologists in the Bush torture program is set forth by one of the leaders of the movement to end that involvement. And a journalist brings the debate home with his description of the torture of prisoners in U.S. supermax prisons.

Finally, in Part III, "Accountability for Torture," three lawyers explain strategies for bringing to justice the officials and lawyers who participated in establishing the Bush administration's policy that led to torture and abuse. Finally, a sociologist finds links between torture, war, and presidential power.

The Bush administration revived Cold War–era torture in its terror war, historian Alfred McCoy explains in our first chapter. McCoy details how the CIA has refined the "art" of torture by developing techniques to manipulate human consciousness. Since drug research had been unsuccessful, the CIA explored sensory deprivation and stress

positions, to be used offensively by CIA interrogators and defensively to train U.S. troops to resist enemy interrogators. In 1963, the CIA created the Counter-Intelligence Interrogation Manual (KUBARK), which codified secret research on mind control. McCoy observes how they dialectically used heat and cold, light and dark, noise and silence, feast and famine, and sensory overload and deprivation, to pursue their sordid ends.

During the 1970s and 1980s, dictators and military leaders in Chile, Bolivia, Colombia, Guatemala, El Salvador, Honduras, and Paraguay utilized skills they learned at the U.S. Army's School of the Americas (SOA) to torture and execute dissidents. Attorney Bill Quigley's chapter documents how SOA graduates assassinated bishops, priests, labor leaders, women, children, and community workers, and massacred entire communities. Although in 2001 the school was cosmetically renamed the Western Hemisphere Institute for Security Cooperation (WHINSEC) at Fort Benning, Georgia, the U.S. government continues to resist accountability for those complicit in the egregious human rights violations perpetrated by the school's students. There is a growing protest movement against the SOA/WHINSEC. Since the assassination of Archbishop Oscar Romero in El Salvador in 1980, protesters have increasingly engaged in lobbying and civil disobedience, including regular teach-ins, demonstrations, and prayer vigils. Up to 20,000 demonstrators descend on Fort Benning each year. They want the U.S. government to admit what it has done at the school, allow an independent investigation, and accept responsibility for the consequences. They are demanding that the torture school be closed.

Political scientist Terry Karl, in the next chapter, reports that thousands were tortured and murdered by the government and death squads of El Salvador while the United States was training, financing, and advising its army and intelligence establishment. She describes how the United States uses "deniability" to cover up state terror by its allies, refashioning them into "freedom fighters" in order to maintain the support of the American people.

Latin America is not the only place where the United States has historically sponsored torturers. In 1953, the CIA engineered a coup in Iran that ousted Prime Minister Mohamed Mossedeq, whose government had refused to capitulate to Western property claims when it nationalized the Anglo-Iranian Oil Company two years before. After the coup, the United States helped install Mohammed Reza Shah Pahlavi, who ruled Iran with a fist of terror for the next 25 years until the 1979 Iranian revolution.

One year before the revolution, when I visited that country on a mission of the International Association of Democratic Lawyers, hundreds of U.S. corporations were doing business in Iran, the largest customer of U.S. arms at the time.

As many as 100,000 political prisoners had been incarcerated in the Shah's dungeons. Several former prisoners who risked their lives to speak with me described the brutal torture they had suffered. Their torturers utilized a helmet which magnified tenfold the prisoner's screams inside his head. The sounds of the screams, they said, were worse than the original treatment that caused them to scream in the first place. They showed me the web of scars on their bodies, a lasting memorial of their torture. In 1976, Amnesty International reported allegations of whipping and beating, electric shocks, the extraction of nails and teeth, boiling water pumped into the rectum, heavy weights hung on testicles,

tying the prisoner to a table heated to white heat, inserting a broken bottle into the anus, and rape in Iran's prisons. Allegations of death under torture were not uncommon.[19] During this time, the United States continued to support the Shah's torturous regime.

Although there is general consensus that torture does not work—the subject will say anything to get the torture to stop—what if it did work? Would that justify torturing people into providing information? Philosopher John Lango's chapter asks whether an extreme emergency can ever trump the absolute prohibition of torture. Lango rejects the nuclear weapon and ticking bomb scenarios as "fantasy" and declares, "Terrorism can never warrant terroristic torment." He suggests a protocol to the Convention against Torture to fortify the moral prohibition of torture and cruel treatment.

The moral equivalence of torture and "one-sided warfare" is explored in Professor Richard Falk's provocative chapter. He critiques the liberal moral outrage at torture but uncritical acceptance of one-sided warfare. Nations, particularly the United States, inflict horrific pain on primarily non-white people in other countries, but suffer no consequences. Falk draws an analogy between the torture victim and the subjects of one-sided warfare—both are under the total control of the perpetrator. He recommends adherence to international humanitarian law and repudiation of "wars of choice."

Bush's "Operation Iraqi Freedom" is a war of choice. Weapons inspectors insisted that Saddam Hussein had no weapons of mass destruction; his military capacity had been neutered by the first Gulf War, a decade of punishing sanctions, and the nearly daily bombings in the "no-fly zones." So Bush endeavored to create a connection between Hussein and al-Qaeda to justify the 2003 invasion of Iraq. Top Bush officials put heavy pressure on Pentagon interrogators to get Khalid Sheikh Mohammed and Abu Zubaydah

to reveal a link between Hussein and the 9/11 hijackers, according to a report of the Senate Armed Services Committee.[20]

The CIA waterboarded Khalid Sheikh Mohammed 183 times and Abu Zubaydah 83 times.[21] Waterboarding has long been considered torture.[22] One of Deputy Assistant Attorney General Stephen Bradbury's 2005 memos asserted that "enhanced techniques" on Zubaydah yielded the identification of Mohammed and an alleged radioactive bomb plot by Jose Padilla.[23] But FBI supervisory special agent Ali Soufan, who interrogated Zubaydah from March to June 2002, wrote in the *New York Times* that Zubaydah produced that information under traditional interrogation methods, before the harsh techniques were ever used.[24]

Journalist Jane Mayer's chapter recounts the case of Ibn al-Sheikh al-Libi, who was tortured into providing information the CIA knew to be false. Yet Colin Powell cited al-Libi's falsehoods to the Security Council to bolster the case for Bush's war with Iraq.[25] Mayer chronicles the sordid record of Bush's "extraordinary rendition" program.

Another victim of the Bush torture program is Adnan Farhan Abdul Latif, a Yemeni prisoner who has been held at the U.S. prison camp at Guantánamo for several years. Latif is one of hundreds of men and boys who have appeared before the Combatant Status Review Tribunals (CSRTs)—kangaroo courts the Bush administration established to determine whether a detainee is an "enemy combatant." Detainees were denied the right to counsel, with access only to a "personal representative" who owed no duty of confidentiality to his client and often did not even advocate on behalf of the detainee; one even argued the government's case. The detainee did not have the right to see much of the evidence against him and was very limited in the evidence he could present. The

CSRTs were criticized by military participants in the process. Lt. Col. Stephen Abraham, a veteran of U.S. intelligence, said they often relied on "generic" evidence and were set up to rubber-stamp the "enemy combatant" designation. When he sat as a judge in one of the tribunals, Abraham and the other two judges—a colonel and a major in the Air Force—"found the information presented to lack substance," and noted that statements presented as factual "lacked even the most fundamental earmarks of objectively credible evidence." After they determined there was "no factual basis" to conclude the detainee was an enemy combatant, the government pressured them to change their conclusion, but they refused. Abraham was never assigned to another CSRT panel.[26]

Latif's personal representative, attorney Marc Falkoff, collected information from his litigation notebooks, military documents, and his client's letters and poems. The resulting chapter is a powerful narrative in Latif's own words. "This place is like a hideous ghost," he writes. Falkoff could see the scars on the wrists of Latif, one of the hunger strikers at Guantánamo.

More than a third of the prisoners at Guantánamo have refused food to protest being held incommunicado for years with no hope of release. They have concluded that death could not be worse than the living hell they are forced to endure. Attorney Julia Tarver recounts how two of her clients described being force-fed by the guards:

> Yousef was the second detainee to have an NG [nasal gastric] tube inserted into his nose and pushed all the way down his throat and into his stomach, a procedure which caused him great pain. Yousef was given no anesthesia or sedative for the procedure; instead, two soldiers restrained him—one holding his chin while the other held him back by his hair, and a medical staff member

> forcefully inserted the tube in his nose and down his throat. Much blood came out of his nose. Yousef said he could not speak for two days after the procedure; he said he felt like a piece of metal was inside of him. He said he could not sleep because of the severe pain.[27]

When Yousef and others "vomited up blood, the soldiers mocked and cursed at them, and taunted them with statements like 'look what your religion has brought you.'"

In 2006, the United Nations Human Rights Commission determined that the violent force-feeding of detainees by the U.S. military at Guantánamo amounts to torture.[28] The commission confirmed that "doctors and other health professionals are participating in force-feeding detainees." It cited the Declarations of Tokyo and Malta, the World Medical Association, and the American Medical Association, which prohibit doctors from taking part in the force-feeding of detainees, provided the detainee is capable of understanding the consequences of refusing food. International Committee of the Red Cross guidelines state: "Doctors should never be party to actual coercive feeding. . . . Such actions can be considered a form of torture and under no circumstances should doctors participate in them on the pretext of saving the hunger striker's life."[29]

Psychologists were also an essential component of the Bush torture regime, psychologist Stephen Soldz writes in the next chapter. They helped develop, supervise, implement, and disseminate abusive interrogation techniques, modeled on the U.S. military's Survival, Evasion, Resistance and Escape (SERE) program. Bush administration officials "reverse engineered" SERE techniques to design counter-resistance methods in order to break detainees.

Soldz explains how the American Psychological Association (APA), the nation's largest professional mental health organization, "provided essential cover" for the psychologists' assistance to the torture regime. Notably, a group of activist psychologists opposed the APA's complicity. The movement achieved several major successes, which forced a change in APA policies. Soldz's chapter documents that movement.

Center for Constitutional Rights (CCR) president and attorney Michael Ratner's chapter traces the abusive treatment and struggles endured by clients of CCR, which initiated the Guantánamo litigation. Ratner describes CCR's victories in the U.S. Supreme Court as well as its efforts to convince Germany to prosecute U.S. leaders for torture under the well-established doctrine of "universal jurisdiction." If the United States fails to investigate and prosecute those who committed war crimes, other countries can do so under universal jurisdiction. This is a theory that countries, including the United States, have used for many years to bring to justice foreign nationals for crimes that shock the conscience of the global community. It provides a critical legal tool to hold accountable people who commit crimes against the law of nations, including war crimes and crimes against humanity. Without universal jurisdiction, many of the most notorious criminals would go free.

Israel used universal jurisdiction to prosecute, convict, and execute Adolph Eichmann, often called "the architect of the Holocaust," for crimes unconnected to Israel. Eichmann orchestrated the deportations but was not necessarily present at the gas chambers when millions were murdered. A U.S. federal court in Miami also used universal jurisdiction to convict Chuckie Taylor, son of the former Liberian president, of torture that occurred in Liberia, and sentence him to 97 years in prison in January 2009.[30]

Universal jurisdiction complements, but does not supersede, national prosecutions. So if the United States was investigating the Bush officials and lawyers, other countries would refrain from doing so. Spain launched an investigation of six Bush-era lawyers for their complicity in the U.S. torture policy. As this book went to press, the Spanish legislature had weakened its universal jurisdiction statute but the investigation of John Yoo, Jay Bybee, Alberto Gonzales, David Addington, William Haynes, and Douglas Feith in Spain was ongoing.

In other judicial developments, two courts issued significant decisions in extraordinary rendition cases—one in the United States and the other in Italy. On November 2, 2009, a sharply divided U.S. federal court of appeals dismissed Canadian citizen Maher Arar's case against U.S. officials for sending him to Syria to be tortured.[31] CCR filed a lawsuit in which Arar alleged he was held in a "grave cell," beaten with an electrical cable, and threatened with electric shocks until he falsely confessed to being in Afghanistan. The Canadian government exonerated Arar and awarded him a multi-million-dollar judgment for its role in the travesty. But the U.S. court deferred to the executive on foreign policy matters and relied on the state secrets privilege to shield the officials from liability. Two days later, an Italian judge convicted 22 CIA operatives and a U.S. Air Force colonel of arranging the kidnapping of a Muslim cleric in Milan in 2003, then flying him to Egypt where he was tortured. Hassan Mustafa Osama Nasr told Human Rights Watch in 2007 that he was "hung up like a slaughtered sheep and given electrical shocks" in Egypt. "I was brutally tortured and I could hear the screams of others who were tortured too," he added.[32] The convicted Americans face arrest if they travel outside the United States.

The torture of prisoners in U.S. custody did not begin in Iraq, Afghanistan, and Guantánamo. “I do not view the sexual abuse, torture and humiliation of Iraqi prisoners by American soldiers as an isolated event,” says Terry Kupers, a psychiatrist who testifies about human rights abuses in U.S. prisons.

The plight of prisoners in the United States is strikingly similar to the plight of the Iraqis who were abused by American GIs. Prisoners are maced, raped, beaten, starved, left naked in freezing cold cells, and otherwise abused in too many American prisons, as substantiated by findings in many courts that prisoners' constitutional rights to remain free of cruel and unusual punishment are being violated.[33]

Journalist Lance Tapley’s chapter describes the torture of prisoners, especially those who suffer from mental illness, in the supermax prisons of the United States. “Cell extraction” is one of the most common forms of abuse. The guard slams the inmate’s head against the wall and drops him on the floor while handcuffed. In another variation of this technique, the “point man” smashes his large body shield into the prisoner, knocks him down, jumps on him, maces him in the face, pushes him onto the bed, twists his arms behind his back, and handcuffs him. The guard carries the prisoner naked through the cell block, continuing to mace him, then binds him to a restraint chair and leaves him there for hours, naked, cold, and screaming. Tapley noted that one inmate’s arm was broken during the cell extraction. Solitary confinement, which can result in hallucination, depression, and catatonia, is a form of torture.

Torture techniques the United States has used in other countries are all too familiar in U.S. prisons as well. Hooded, robed figures with electrical wiring attached to them have been observed at the city jail in Sacramento, California. Male prisoners in

Maricopa County jails in Phoenix, Arizona were forced to wear women's underwear. And guards in the Utah prison system piled naked bodies in grotesque and uncomfortable positions.[34]

The connection between mistreatment of prisoners here and abroad is even more striking. For example, John Armstrong ran Connecticut's Department of Corrections from 1995 to 2003, before being sent to Iraq as a prison adviser in September 2003. On his Connecticut watch, two mentally ill prisoners died while being restrained by guards. Two more inmates died in custody after guards mistreated them. Armstrong once made a remark that equated the death penalty with euthanasia.[35]

More than 100 African American men alleged that they were tortured by officers in the Chicago Police Department from 1973 to 1991. Allegations include the use of cattle prods that delivered electric shocks and mock executions. The city of Chicago approved a $20 million settlement with four former death row inmates who had been tortured by officers in the Chicago Police Department. Former Chicago Police Lt. Jon Burge was charged by federal officials with perjury and obstruction of justice for lying about the torture of African American suspects. The statute of limitations on torture crimes had run because of a cover-up by Chicago prosecutors, according to attorney Flint Taylor. Burge's trial began as we went to press.[36] And in Michigan, the state agreed to pay $100 million to more than 500 female prisoners who alleged sexual assault by guards.[37]

In the wake of the September 11 attacks, more than 1,200 Muslim, South Asian, and Arab non-citizens were rounded up by the Immigration and Naturalization Service and the FBI in one of the most extensive incidents of racial profiling in the United States

since people of Japanese descent were interned during World War II. None were ever charged with any connection to terrorism. A December 2003 report by the Department of Justice's Office of Inspector General investigated allegations of physical and verbal abuse of non-citizen prisoners by the Federal Bureau of Prisons' Metropolitan Detention Center (MDC) in Brooklyn, New York.[38] The report concluded that several MDC staff members slammed and bounced detainees into the walls, twisted or bent their arms, hands, wrists, or fingers, pulled their thumbs back, tripped them, and dragged them on the floor. CCR filed a class action lawsuit in 2002, on behalf of people detained by the United States in the racial profiling dragnet after 9/11.[39] In November 2009, five of the seven plaintiffs settled their claims for $1.26 million from the United States.

The U.S. Supreme Court has applied the Eighth Amendment's ban on cruel and unusual punishment to conditions of confinement incompatible with the evolving standards of decency that mark the progress of a maturing society.[40] The United Nations' Economic and Social Council promulgated the Standard Minimum Rules for the Treatment of Prisoners.[41] They provide that corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman, or degrading punishments shall be completely prohibited as punishments for disciplinary actions. The Supreme Court in *Estelle v. Gamble* specified that these rules should be included in the measurement of "evolving standards of decency."[42] Indeed, Fyodor Dostoevsky once said, "The degree of civilization in a society can be judged by entering its prisons."[43]

Torture is absolutely forbidden in all circumstances. It is considered a *jus cogens* norm. Attorney Jeanne Mirer's chapter points out that no country can ever pass a law that authorizes torture any more than it can legitimize slavery, genocide, or wars of

aggression. There is no statute of limitations, no immunity from prosecution, and no defense of obedience of superior orders for violation of a *jus cogens* norm. Mirer notes that every U.S. circuit court that has reviewed the issue had concluded that torture violates well-established customary international law.

In spite of the absolute legal ban on torture, John Yoo, one of the most notorious torture memo authors, told contributing author Jane Mayer that Congress "can't prevent the president from ordering torture." When asked whether any law could stop the president from "crushing the testicles of the person's child," Yoo answered, "No treaty." Asked if another law could forbid it, Yoo qualified his answer, saying, "I think it depends on why the president thinks he needs to do that."[44]

Yoo and Jay Bybee wrote a memorandum the same month Bush invaded Iraq, in which they announced that the Department of Justice would construe U.S. criminal laws as not applicable to the president's detention and interrogation of enemy combatants. According to Bybee and Yoo, the federal statutes against torture, assault, maiming, and stalking do not apply to the military in the conduct of the war.[45] The behavior prohibited by these statutes is appalling. For example, the federal maiming statute makes it a crime for someone "with the intent to torture, maim, or disfigure," to "cut, bite, or slit the nose, ear or lip, or cut out or disable the tongue, or put out or destroy an eye, or cut off or disable a limb or any member of another person." It further prohibits individuals from "throw[ing] or pour[ing] upon another person any scalding water, corrosive acid, or caustic substance," with like intent.[46]

Bybee-Yoo also redefined torture to require that the victim experience intense pain or suffering equivalent to that associated with physical injury so severe that death,

organ failure, or permanent damage resulting in loss of significant body functions will likely result. This definition contravenes the definition in the Convention Against Torture.[47]

Yoo and Bybee said self-defense or necessity could be used as a defense to war crimes prosecutions for torture, notwithstanding the Torture Convention's categorical prohibition against torture in all circumstances, even in wartime. Their memos provided the basis for the administration's torture of prisoners.

When asked in a *New York Times Magazine* interview, "Do you regret writing the so-called torture memos, which claimed that President Bush was legally entitled to ignore laws prohibiting torture?" Yoo responded, "No, I had to write them. It was my job. As a lawyer, I had a client [President Bush and 'the U.S. government as a whole.'] The client needed a legal question answered."[48] In his chapter, British barrister and international law expert Philippe Sands grapples with the question of whether an international lawyer should fully advise a client or merely provide "legal cover" for the client's lawbreaking. Citing Bush lawyers who wrote memos to circumvent international law, Sands demonstrates how they provided an after-the-fact basis to "green-light" the harsh interrogation procedures.

Law professor Jordan Paust's chapter analyzes the torture memos and explains why they did not provide a "Golden Shield" for those who planned, ordered, authorized, abetted, or perpetrated torture and cruel, inhumane, and degrading treatment. He describes the "common, unifying" plan to violate international law in the treatment and interrogation of detainees that emerged in the Bush administration.

On February 7, 2002, Bush signed a memo erroneously stating that the Geneva Conventions,[49] which require humane treatment, did not apply to al-Qaeda and the Taliban. But the Supreme Court made clear that Geneva protects all prisoners.[50] Bush admitted that he approved of high-level meetings of the Principals Committee in which harsh interrogation techniques, including waterboarding, were authorized by Dick Cheney, Condoleezza Rice, John Ashcroft, Colin Powell, Donald Rumsfeld, and George Tenet.[51]

Cheney and Bush have also publicly confessed to ordering war crimes. Asked about waterboarding in an *ABC News* interview, Cheney replied, "I was aware of the program, certainly, and involved in helping get the process cleared." He also said he still believes waterboarding was an appropriate method to use on terrorism suspects.[52] Cheney said the enhanced interrogation techniques yielded the "desired results."[53] Bush also acknowledged to the Economic Club of Grand Rapids, Michigan that he had waterboarded Khalid Sheik Mohammed and said he would "do it again to save lives."[54]

The bipartisan December 11, 2008 report of the Senate Armed Services Committee concluded that, "senior officials in the United States government solicited information on how to use aggressive techniques, redefined the law to create the appearance of their legality, and authorized their use against detainees."[55]

As a result of the Watergate scandal, President Jimmy Carter asked Congress to pass a law authorizing the appointment of a special prosecutor to investigate and prosecute unlawful acts by high government officials. The Ethics in Government Act empowered the attorney general to conduct a preliminary 90-day investigation when serious allegations arose involving a high government official.

Under the act, the attorney general could drop the investigation if he or she determined it was unsupported by the evidence. But if he found some merit to the charges, he was required to apply to a three-judge panel of federal court judges who would appoint a special prosecutor to investigate, prosecute, and issue a report. This procedure was used to select Kenneth Starr, whose witch hunt led to President Bill Clinton's impeachment. As a result, Congress allowed the independent counsel statute to expire by its own terms in 1999. It is time for the American people to demand that Congress re-enact an independent counsel statute.

The Constitution requires President Obama to faithfully execute the laws.[56] "My view is . . . that nobody's above the law, and if there are clear instances of wrongdoing, that people should be prosecuted just like any ordinary citizen," Obama stated. "But," he added, "that generally speaking, I'm more interested in looking forward than I am in looking backwards."[57] Obama's attorney general must prosecute lawbreakers—not just the bank robber, but also the CIA agent who tortured or abused a prisoner, and the officials and lawyers who set the policy. When the United States ratified the Geneva Conventions and the Convention against Torture, thereby making them part of U.S. law, we agreed to punish those who violate their prohibitions. Our law prohibits torture and cruel, inhuman, or degrading treatment, and requires that those who subject people to such treatment be punished.[58] The Convention against Torture compels us to refer all torture cases for prosecution or to extradite the suspect to a country that will undertake a criminal investigation. The Geneva Conventions proclaim an "obligation" to bring people who have committed torture and cruel treatment before our "own courts." Two federal statutes—the Torture Statute[59] and the War Crimes Act—provide for life imprisonment

and even the death penalty if the victim dies as a result of torture. Unfortunately, the Torture Statute only punishes torture committed abroad. Congress should amend this law to cover torture committed inside the United States as well.[60]

Lt. Gen. Antonio Taguba, who investigated the Abu Ghraib scandal, said, "There is no longer any doubt as to whether the current [Bush] administration has committed war crimes. The only question that remains to be answered is whether those who ordered the use of torture will be held to account."[61]

Lawyers who wrote the memos that purported to immunize government officials from war crimes liability include John Yoo, Jay Bybee, William Haynes, David Addington, Stephen Bradbury, Robert J. Delahunty, and Alberto Gonzales. There is precedent in our law for holding lawyers criminally liable for participating in a common plan to violate the law. In *United States v. Altstoetter*, Nazi lawyers were convicted of war crimes and crimes against humanity for advising Hitler on how to "legally" disappear political suspects to special detention camps.[62]

Altstoetter and the case of the Bush lawyers share common aspects. Both dealt with people detained during wartime who were not prisoners of war; in both, it was reasonably foreseeable that the advice they provided would result in great physical or mental harm or death to many detainees; and in both, the advice was legally erroneous. More than 100 people have died in U.S. detention since 9/11, many from torture.[63] And the Department of Justice's Office of Legal Counsel later withdrew one of the most egregious Yoo-Bybee memos,[64] an admission that the advice in it was defective.

The legislative branch of our government was also complicit in the Bush torture policy, as sociologist Thomas Reifer contends in our final chapter. He writes that torture

worked to extract false confessions that were used to gain congressional approval for Bush's illegal war of aggression in Iraq. Citing the "liberal culture of torture," Reifer criticizes Obama for shielding the executive branch under a cloak of secrecy in order to prevent further revelations about torture.

Indeed, Obama's Department of Justice supported the dismissal of lawsuits filed by victims of CIA extraordinary renditions. Justice Department lawyers also asked the Ninth Circuit Court of Appeals to dismiss a civil case brought against John Yoo by Jose Padilla, the U.S. citizen held incommunicado and tortured after his arrest at Chicago's O'Hare Airport. And when four Britons sued Donald Rumsfeld and other Bush officials to obtain relief for the torture they suffered, Obama's Justice Department argued that their lawsuit should be dismissed.[65]

Obama insists that his administration does not engage in torture. But if the officials, lawyers, and operatives from the Bush administration who ordered, committed, aided, and abetted torture are not held legally accountable, what will prevent the next administration from authorizing cruel treatment? And if we countenance impunity for those who participated in the torture and abuse, we will give the terrorists a third recruiting tool—along with Abu Ghraib and Guantánamo. The "War on Terror" has been uncritically accepted by most in this country. But terrorism is a tactic, not an enemy. One cannot declare war on a tactic. The way to combat terrorism is by identifying and targeting its root causes, including poverty, lack of education, and foreign occupation. As long as the United States continues to wage wars of choice and support unsavory regimes that treat their people inhumanely, there will be blowback. Starting illegal and

unnecessary wars will make us more vulnerable to terrorism, not less. A complete reexamination of U.S. foreign policy is in order.

---

1. Cofer Black, *9/11 Congressional Inquiry*, Washington, DC, Sept. 26, 2002.

2. George W. Bush, *State of the Union Address*, Washington, DC, Jan. 28, 2003.

3. See Marjorie Cohn, *Cowboy Republic: Six Ways the Bush Gang Has Defied the Law* (Sausalito: PoliPointPress, 2007), pp. 49–50.

4. See Jane Mayer, *The Dark Side* (New York: Doubleday, 2008), 92.

5. See Richard Serrano, "Prison Interrogators' Gloves Came Off Before Abu Ghraib," *Los Angeles Times*, June, 9, 2004.

6. Author's conversation with John Walker Lindh's attorney, George Harris; Mayer, *Dark Side*, p. 97.

7. See Jamie Doran and Najibullah Quraishi, *Afghan Massacre: The Convoy of Death*, 2002, http://www.acftv.com/archive/article.asp?archive_id=1 (last visited Nov. 10, 2009); Anderson Cooper, "Obama Orders Review of Alleged Slayings of Taliban in Bush Era," *CNN*, July 13, 2009, http://edition.cnn.com/2009/POLITICS/07/12/obama. afghan.killings/ (last visited Nov. 10, 2009).

8. See Dana Priest and Barton Gellman, "U.S. Decries Abuse But Defends Interrogations," *Washington Post*, Dec. 26, 2002, http://www.washingtonpost.com/wp-dyn/content/article/2006/06/09/AR2006060901356.html (last visited Nov. 16, 2009).

9. U.S. Senate Armed Services Committee, *Statement of Alberto J. Mora*, June 17, 2008, p. 5, http://armed-services.senate.gov/statemnt/2008/June/Mora%2006-17-08.pdf (last visited Nov. 10, 2009).

10. George W. Bush, remarks at press availability, Rose Garden, White House, Washington, DC, Apr. 30, 2004, http://georgewbush-whitehouse.archives.gov/news/releases/2004/04/20040430-2.html (last visited Nov. 10, 2009).

11. See Scott Shane, David Johnston, and James Risen, "Secret Endorsement of Severe Interrogations," *New York Times*, Oct. 4, 2007, http://www.nytimes.com/2007/10/04/washington/04interrogate.html (last visited Nov. 10, 2009).

12. See Jay S. Bybee, *Memorandum for John Rizzo, Acting General Counsel of the Central Intelligence Agency, Interrogation of al Qaeda Operative*, Aug. 1, 2002, http://luxmedia.vo.llnwd.net/o10/clients/aclu/olc_08012002_bybee.pdf (last visited Nov. 10, 2009).

13. See Sheryl Gay Stolberg, "Bush Says Interrogation Methods Aren't Torture," *New York Times*, Oct. 6, 2007, http://www.nytimes.com/2007/10/06/us/nationalspecial3/06interrogate.html (last visited Nov. 10, 2009).

14. See Mayer, *Dark Side*, 255.

15. 18 U.S.C. 2441.

16. See, for example, John C. Yoo, memorandum to William Haynes regarding "Application of Treaties and Laws to al Qaeda and Taliban Detainees," Jan. 9, 2002, http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB127/02.01.09.pdf (last visited Nov. 10, 2009); Alberto Gonzales, memorandum to President Bush regarding "Application of the Geneva Convention on Prisoners of War to the Conflict with al Qaeda and the Taliban," Jan. 25, 2002, http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB127/02.01.25.pdf (last visited Nov. 10, 2009).

17. U.S. Constitution, art. VI, para. 2.

18. *The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), art. 2.

19. See U.S. Senate Armed Services Committee, *Inquiry into the Treatment of Detainees in U.S. Custody*, Nov. 20, 2008, pp. 16–18, http://armed-services.senate.gov/Publications/Detainee%20Report%20Final_April%2022%202009.pdf (last visited Nov. 16, 2009).

20. Amnesty International, *Amnesty International Briefing: Iran* (London: Amnesty International, 1976), pp. 8–9.

21. See Stephen G. Bradbury, memorandum to John Rizzo regarding "Application of United States Obligations Under Article 16 of the Convention Against Torture to Certain Techniques that May Be Used in the Interrogation of High Value al Qaeda Detainees," May 30, 2005, p. 37, http://luxmedia.vo.llnwd.net/o10/clients/aclu/olc_05302005_bradbury.pdf (last visited Nov. 10, 2009).

22. See, for example, *U.S. v. Lee*, 744 F.2d 1124 (5th Cir. 1984).

23. See Bradbury, memo regarding Art. 16 of CAT, p. 10.

24. Ali Soufan, "My Tortured Decision," *New York Times*, Apr. 22, 2009, http://www.nytimes.com/2009/04/23/opinion/23soufan.html (last visited Nov. 10, 2009).

25. See Marjorie Cohn, *Cowboy Republic: Six Ways the Bush Gang Has Defied the Law* (Sausalito: PoliPointPress, 2007), pp. 13–14.

26. U.S. Senate Armed Services Committee, *Statement of Stephen E. Abraham*, July 26, 2007, pp. 5, 10, http://armedservices.house.gov/pdfs/FC072607/Abraham_Testimony072607.pdf (last visited Nov. 10, 2009).

27. Julia Tarver, *Supplemental Declaration of Julia Tarver*, Oct. 13, 2005, para. 30, http://humanrights.ucdavis.edu/projects/the-guantanamo-testimonials-project/testimonies/prisoner-testimonies/supplemental-declaration-of-julia-tarver-october-13-2005 (last visited Nov. 10, 2009).

28. See U.N. Commission on Human Rights, *Situation of Detainees at Guantánamo Bay*, 62nd sess., Feb. 15, 2006, http://www.nytimes.com/packages/pdf/international/20060216gitmo_report.pdf (last visited Nov. 10, 2009).

29. International Committee of the Red Cross, "Maltreatment and Torture," *Research in Legal Medicine*, vol. 19, 1998.

30. Editorial, "Taylors' Son Jailed for 97 Years," *BBC News*, Jan. 9, 2009, http://news.bbc.co.uk/2/hi/americas/7820069.stm (last visited Nov. 11, 2009).

31. *Arar v. Ashcroft, et al.*, U.S. 2nd Court of Appeals, 06-4216-cv (Nov. 2, 2009).

32. See Human Rights Watch, "Italy/US: Ruling Expected in Historic CIA Rendition Case," Nov. 3, 2009, http://www.hrw. org/en/news/2009/11/03/italyus-ruling-expected-historic-cia-rendition-case (last visited Nov. 11, 2009); Rachel Donadio, "Italy Convicts 23 Americans for CIA Renditions," *New York Times*, Nov. 4, 2009, http://www.nytimes.com/2009/11/05/world/europe/05italy.html (last visited Jan. 5, 2010).

33. See Norman Solomon, "From Attica to Abu Ghraib—and a Prison Near You," *Common Dreams*, Aug. 6, 2004, http://www.commondreams.org/views04/0806-02.htm (last visited Nov. 11, 2009).

34. See Anne-Marie Cusac, "Abu Ghraib, USA," *The Progressive*, Aug. 7, 2008, http://www.progressive.org/mag_amcabu (last visited Nov. 11, 2009).

35. See Antonio Ponver III, "Iraqi Prisoner Abuse: Why Are We Surprised?" *CounterPunch*, June 12, 2004, http://www.counterpunch.org/ponvert06132004.html (last visited Nov. 16, 2009).

36. See "Trial Begins for Ex-Chicago Police Lt. Accused of Torturing More Than 100 African American Men," *Democracy Now!* May 24, 2010, http://democracynow.org/2010/5/24/trial_begins_for_ex_chicago_police; Gary Washburn, "City

Council Settles Burge Police Torture Cases," *Chicago Tribune*, Jan. 9, 2008, http://newsblogs.chicagotribune.com/clout_st/2008/01/city-council-se.html.

37. See Jeff Seidel and Dawson Bell, "$100 million ends prisoner sex-abuse suit: Women started their legal fight in 1996," *Freep.com*, July 16, 2009, http://www.freep.com/article/20090716/NEWS06/101250006/0/MULTI/100-million-ends-prisoner-sex-abuse-suit (last visited Jan. 28, 2010); David Eggert, "10 Get $15.5 Million for Mich. Prison Sex Abuse," *USA Today*, Feb. 1, 2008, http://www.usatoday.com/news/nation/2008-02-01-3553096094_x.htm (last visited Nov. 13, 2009); *Neal v. Michigan Dept. of Corrections*, 230 Mich. App. 202 (1998).

38. U.S. Dept. of Justice, Office of the Inspector General, *Supplemental Report on September 11 Detainees' Allegations of Abuse at the Metropolitan Detention Center in Brooklyn, New York*, Dec. 2003, http://www.fas.org/irp/agency/doj/oig/detainees1203.pdf (last visited Nov. 11, 2009).

39. Class Action Complaint and Demand for Jury Trial, *Ibrahim Turkmen, et al. v. John Ashcroft, et al.*, CV-02-2307 (E.D.N.Y. Apr. 17, 2002), http://news.findlaw.com/hdocs/docs/terrorism/turkmenash41702cmp.pdf (last visited Nov. 13, 2009).

40. *Estelle v. Gamble*, 429 U.S. 97 (1976).

41. UN Economic and Social Council, *Standard Minimum Rules for the Treatment of Prisoners*, Res. 663 C, July 31, 1957.

42. *Estelle v. Gamble*, 429 U.S. at 102.

43. Fyodor Dostoevsky (1821–1881).

44. See Mayer, *Dark Side*, p. 153.

45. See, for example, Bybee, memo regarding interrogation; Yoo, memorandum regarding treaty application.

46. 18 U.S.C. 114.

47. The Convention defines torture as: "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him

or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity." *Convention Against Torture*, pt. I, art. 1. Cf. Jay S. Bybee, memorandum to Alberto Gonzales regarding the definition of torture, Aug. 1, 2002, http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB127/02.08.01.pdf (last visited Nov. 10, 2009).

48. Deborah Solomon, "Questions for John Yoo," *New York Times Magazine*, Dec. 29, 2010, http://www.nytimes.com/2010/01/03/magazine/03fob-q4-t.html (last visited Jan. 6, 2010).

49. See *Convention Relative to the Treatment of Prisoners of War* (*Geneva Convention III*), art. 17, 130, Aug. 12, 1949; *Convention Relative to the Protection of Civilian Persons in Time of War* (*Geneva Convention IV*), art. 32, 283, Aug. 12, 1949.

50. *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006).

51. See Jan Crawford Greenburg, Howard L. Rosenburg, and Ariane de Vogue, "Bush Aware of Advisers' Interrogation Talks," *ABC News*, Apr. 11, 2008, http://abcnews.go.com/TheLaw/LawPolitics/story?id=4635175&page=1 (last visited Nov. 10, 2009).

52. Richard Cheney, interview with *ABC News*, Dec. 15, 2008, http://abcnews.go.com/Politics/story?id=6464697&page=1&page=1 (last visited Nov. 10, 2009).

53. Jon Ward, "Cheney Defends War on Terror's Morality," *Washington Times*, Dec. 18, 2008, http://www.washingtontimes.com/news/2008/dec/18/cheney-defends-morality-of-war-on-terror/?page=2 (last visited Nov. 16, 2009).

54. "Bush Unrepentant," *Daily News; New Plymouth, NZ*, June 4, 2010.

55. U.S. Senate Armed Services Committee, *Inquiry Into the Treatment of Detainees in U.S. Custody*, p. xii, http://levin.senate.gov/newsroom/supporting/2008/Detainees. 121108.pdf (last visited Nov. 11, 2009).

56. U.S. Constitution, art. II, § 1.

57. See Phillip Rucker, "Leahy Proposes Panel to Investigate Bush Era," *Washington Post*, Feb. 10, 2009, http://www.washingtonpost.com/wp-dyn/content/article/2009/02/09/AR2009020903221.html (last visited Nov. 11, 2009).

58. See also *International Covenant on Civil and Political Rights*, art. 7, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc A/6316 (1966), 999 U.N.T.S. 171; U.N. Human Rights Comm., General Comment No. 20, Concerning the Prohibition of Torture and Cruel, Inhuman or Degrading Treatment or Punishment (Article 7), U.N. Doc. A/47/40 (1992).

59. 18 U.S.C. 2340 *et seq*.

60. Although beyond the scope of this book, it bears mention that there are civil statutes that can be used to hold corporations and individuals liable for their participation in torture committed in foreign countries. The Alien Tort Statute, 28 U.S.C. 1350, provides a cause of action in U.S. courts for an alien who is the victim of a tort committed in violation of the law of nations (customary international law) or a U.S. treaty. In *Filartiga v. Pena-Irala*, 630 F.2d 876 (2d Cir. 1980), the Court of Appeals held that torture committed by a state official in Paraguay against one in detention violated the law of nations and thus U.S. law. See *Doe v. Unocal*, 395 F.3d 932 (9th Cir. 2002), *vacated pending rehearing en banc and settled*, 403 F.3d 708 (9th Cir. 2005), and *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004). The Torture Victim Protection Act, 28 U.S.C. 1350, provides a cause of action for U.S. citizens and non-citizens against those who commit acts of torture under color of foreign law. See *Wiwa v. Royal Dutch Petroleum Co.*, 226 F.3d 88 (2d Cir. 2000) *cert. denied*, 532 U.S. 941 (2001).

61. See Dan Froomlin, "General Accuses WH of War Crimes," *Washington Post*, June 18, 2008, http://www.washingtonpost.com/wp-dyn/content/blog/2008/06/18/BL2008061801546.html (last visited Nov. 11, 2009).

62. See *United States v. Altstoetter* ("The Justice Case"), reprinted in *Trials of War Criminals*

Before the Nuremberg Military Tribunals Under Control Council Law, vol. 3, no. 10: p. 1058 (Washington, DC: U.S. Government Printing Office, 1951).

63. See Ayaz Nanji, "Report: 108 Died in U.S. Custody," *CBS News*, Mar. 16, 2005, http://www.cbsnews.com/stories/2005/03/16/terror/main680658.shtml (last visited Nov. 11, 2009).

64. See Daniel Levin, memorandum for James B. Comey regarding "Legal Standards Applicable Under 18 U.S.C. §§ 2340–2340A," Dec. 30, 2004, http://fl1.findlaw.com/news.findlaw.com/hdocs/docs/terrorism/dojtorture123004mem.pdf (last visited Nov. 11, 2009).

65. The Supreme Court agreed with the Obama administration, and denied review of a D.C. Circuit Court of Appeals decision that had rejected the claims of the detainees. See *Rasul, et al., v. Myers, et al.*, 09-227, "Order List: 558 U.S.," Dec. 14, 2009, p. 3, http://www.supremecourtus.gov/orders/courtorders/121409zor.pdf (last visited Jan. 6, 2010).